

principles shall apply to account for the difference.

(2) *Safe harbor*—(i) *General rule.* For purposes of paragraph (a) of this section, the fair market value of a debt-for-equity interest is deemed to be equal to the liquidation value of the debt-for-equity interest, as defined in paragraph (b)(2)(iii) of this section, if the following requirements are satisfied—

(A) The creditor, debtor partnership, and its partners treat the fair market value of the indebtedness as being equal to the liquidation value of the debt-for-equity interest for purposes of determining the tax consequences of the debt-for-equity exchange;

(B) If, as part of the same overall transaction, the debtor partnership transfers more than one debt-for-equity interest to one or more creditors, then each creditor, debtor partnership, and its partners treat the fair market value of each debt-for-equity interest transferred by the debtor partnership to such creditors as equal to its liquidation value;

(C) The debt-for-equity exchange is a transaction that has terms that are comparable to terms that would be agreed to by unrelated parties negotiating with adverse interests; and

(D) Subsequent to the debt-for-equity exchange, the debtor partnership does not redeem the debt-for-equity interest, and no person bearing a relationship to the debtor partnership or its partners that is specified in section 267(b) or section 707(b) purchases the debt-for-equity interest, as part of a plan at the time of the debt-for-equity exchange that has as a principal purpose the avoidance of COD income by the debtor partnership.

(ii) *Tiered-partnership rule.* For purposes of this paragraph (b)(2), the liquidation value of a debt-for-equity interest in a partnership (upper-tier partnership) that directly or indirectly owns an interest in one or more partnerships (lower-tier partnership(s)) is determined by taking into account the liquidation value of such lower-tier partnership interests.

(iii) *Definition of liquidation value.* For purposes of this paragraph (b)(2), the liquidation value of a debt-for-equity interest equals the amount of cash that

the creditor would receive with respect to the debt-for-equity interest if, immediately after the debt-for-equity exchange, the partnership sold all of its assets (including goodwill, going concern value, and any other intangibles) for cash equal to the fair market value of those assets and then liquidated.

(c) *Example.* The following example illustrates the provisions of this section:

Example. (i) AB partnership has \$1,000 of outstanding indebtedness owed to C. C agrees to transfer to AB partnership the \$1,000 indebtedness in a debt-for-equity exchange for a debt-for-equity interest in AB partnership. The liquidation value of C's debt-for-equity interest is \$700, which is the amount of cash that C would receive with respect to that interest if, immediately after the debt-for-equity exchange, AB partnership sold all of its assets for cash equal to the fair market value of those assets and then liquidated. Each of the requirements of the liquidation value safe harbor described in paragraph (b)(2) of this section is satisfied.

(ii) Because the requirements in paragraph (b)(2) of this section are satisfied, the fair market value of C's debt-for-equity interest in AB partnership for purposes of determining AB partnership's COD income is the liquidation value of C's debt-for-equity interest, or \$700. Accordingly, AB partnership is treated as satisfying the \$1,000 indebtedness for \$700 under section 108(e)(8).

(d) *Effective/applicability date.* This section applies to debt-for-equity exchanges occurring on or after November 17, 2011.

[T.D. 9557, 76 FR 71258, Nov. 17, 2011]

§ 1.108(c)-1T [Reserved]

§ 1.108(i)-0T Definitions (temporary).

(a) *Definitions.* For purposes of regulations under section 108(i)—

(1) *Acquisition.* An *acquisition*, with respect to any applicable debt instrument, includes an acquisition of the debt instrument for cash or other property, the exchange of the debt instrument for another debt instrument (including an exchange resulting from a modification of the debt instrument), the exchange of the debt instrument for corporate stock or a partnership interest, the contribution of the debt instrument to capital, the complete forgiveness of the indebtedness by the

holder of the debt instrument, and a direct or an indirect acquisition within the meaning of § 1.108–2;

(2) *Applicable debt instrument.* An *applicable debt instrument* is a debt instrument that was issued by a C corporation or any other person in connection with the conduct of a trade or business by such person. In the case of an intercompany obligation (as defined in § 1.1502–13(g)(2)(ii)), *applicable debt instrument* includes only an instrument for which COD income is realized upon the instrument's deemed satisfaction under § 1.1502–13(g)(5);

(3) *C corporation issuer.* *C corporation issuer* means a C corporation that issues a debt instrument with any deferred OID deduction;

(4) *C corporation partner.* A *C corporation partner* is a C corporation that is a direct or indirect partner of an electing partnership or a related partnership;

(5) *COD income.* *COD income* means income from the discharge of indebtedness, as determined under sections 61(a)(12) and 108(a) and the regulations under those sections;

(6) *COD income amount.* A *COD income amount* is a partner's distributive share of COD income with respect to an applicable debt instrument of an electing partnership;

(7) *Debt instrument.* *Debt instrument* means a bond, debenture, note, certificate, or any other instrument or contractual arrangement constituting indebtedness (within the meaning of section 1275(a)(1));

(8) *Deferral period.* For a reacquisition that occurs in 2009, *deferral period* means the taxable year of the reacquisition and the four taxable years following such taxable year. For a reacquisition that occurs in 2010, *deferral period* means the taxable year of the reacquisition and the three taxable years following such taxable year;

(9) *Deferred amount.* A *deferred amount* is the portion of a partner's COD income amount with respect to an applicable debt instrument that is deferred under section 108(i);

(10) *Deferred COD income.* *Deferred COD income* means COD income that is deferred under section 108(i);

(11) *Deferred item.* A *deferred item* is any item of deferred COD income or deferred OID deduction that has not been

previously taken into account under section 108(i);

(12) *Deferred OID deduction.* A *deferred OID deduction* means an otherwise allowable deduction for OID that is deferred under section 108(i)(2) with respect to a debt instrument issued (or treated as issued under section 108(e)(4)) in a debt-for-debt exchange described in section 108(i)(2)(A) or a deemed debt-for-debt exchange described in § 1.108(i)–3T(a);

(13) *Deferred section 465 amount.* A *deferred section 465 amount* is described in paragraph (d)(3) of § 1.108(i)–2T;

(14) *Deferred section 752 amount.* A *deferred section 752 amount* is described in paragraph (b)(3) of § 1.108(i)–2T;

(15) *Direct partner.* A *direct partner* is a person that owns a direct interest in a partnership;

(16) *Electing corporation.* An *electing corporation* is a C corporation with deferred COD income by reason of a section 108(i) election;

(17) *Electing entity.* An *electing entity* is an entity that is a taxpayer that makes an election under section 108(i);

(18) *Electing member.* An *electing member* is an electing corporation that is a member of an affiliated group that files a consolidated return;

(19) *Electing partnership.* An *electing partnership* is a partnership that makes an election under section 108(i);

(20) *Electing S corporation.* An *electing S corporation* is an S corporation that makes an election under section 108(i);

(21) *Included amount.* An *included amount* is the portion of a partner's COD income amount with respect to an applicable debt instrument that is not deferred under section 108(i) and is included in the partner's distributive share of partnership income for the taxable year of the partnership in which the reacquisition occurs;

(22) *Inclusion period.* The *inclusion period* is the five taxable years following the last taxable year of the deferral period;

(23) *Indirect partner.* An *indirect partner* is a person that owns an interest in a partnership through an S corporation and/or one or more partnerships;

(24) *Issuing entity.* An *issuing entity* is any entity that is—

- (i) A related partnership;
- (ii) A related S corporation;

(iii) An electing partnership that issues a debt instrument (or is treated as issuing a debt instrument under section 108(e)(4)) in a debt-for-debt exchange described in section 108(i)(2)(A) or a deemed debt-for-debt exchange described in § 1.108(i)-3T(a); or

(iv) An electing S corporation that issues a debt instrument (or is treated as issuing a debt instrument under section 108(e)(4)) in a debt-for-debt exchange described in section 108(i)(2)(A) or a deemed debt-for-debt exchange described in § 1.108(i)-3T(a);

(25) *OID*. *OID* means original issue discount, as determined under sections 1271 through 1275 (and the regulations under those sections). If the amount of OID with respect to a debt instrument is less than a de minimis amount as determined under § 1.1273-1(d), the OID is treated as zero for purposes of section 108(i)(2);

(26) *Reacquisition*. A *reacquisition*, with respect to any applicable debt instrument, is any event occurring after December 31, 2008 and before January 1, 2011, that causes COD income with respect to such applicable debt instrument, including any acquisition of the debt instrument by the debtor that issued (or is otherwise the obligor under) the debt instrument or a person related to such debtor (within the meaning of section 108(i)(5)(A));

(27) *Related partnership*. A *related partnership* is a partnership that is related to the electing entity (within the meaning of section 108(i)(5)(A)) and that issues a debt instrument in a debt-for-debt exchange described in section 108(i)(2)(A) or a deemed debt-for-debt exchange described in § 1.108(i)-3T(a);

(28) *Related S corporation*. A *related S corporation* is an S corporation that is related to the electing entity (within the meaning of section 108(i)(5)(A)) and that issues a debt instrument in a debt-for-debt exchange described in section 108(i)(2)(A) or a deemed debt-for-debt exchange described in § 1.108(i)-3T(a);

(29) *Separate interest*. A *separate interest* is a direct interest in an electing partnership or in a partnership or S corporation that is a direct or indirect partner of an electing partnership;

(30) *S corporation partner*. An *S corporation partner* is an S corporation that is a direct or indirect partner of

an electing partnership or a related partnership.

(b) *Effective/Applicability dates*—(1) *In general*. This section, § 1.108(i)-2T, and, except as provided in paragraph (b)(2) of this section, § 1.108(i)-1T apply to reacquisitions of applicable debt instruments in taxable years ending after December 31, 2008. In addition, § 1.108(i)-3T applies to debt instruments issued after December 31, 2008, in connection with reacquisitions of applicable debt instruments in taxable years ending after December 31, 2008.

(2) *Acceleration events*—(i) *In general*. Section 1.108(i)-1T(b) (acceleration rules) generally applies to acceleration events occurring on or after August 11, 2010. However, an electing corporation or C corporation issuer may apply the acceleration rules to all acceleration events occurring prior to August 11, 2010 by taking a return position consistent with these provisions beginning with the first acceleration event occurring prior to August 11, 2010. Also, in the case of a consolidated group, if the common parent of the consolidated group applies the acceleration rules on behalf of one member of the consolidated group, then the common parent must apply the acceleration rules to all acceleration events with respect to all members of the group. If the electing corporation, common parent (under the preceding sentence), or C corporation issuer, as the case may be, does not apply the acceleration rules to all acceleration events occurring prior to August 11, 2010, then it is, with respect to all deferred items, subject to the rules of section 108(i)(5)(D)(i).

(3) *Transitional rules*—(i) *Net value acceleration rule and corrective action to restore net value rule*. If an electing corporation applies the acceleration rules of § 1.108(i)-1T(b) to all acceleration events occurring prior to August 11, 2010 and the due date of its tax return (including extensions) for the taxable year of the mandatory acceleration event occurs prior to August 11, 2010, then for purposes of the net value acceleration rule described in § 1.108(i)-1T(b)(2)(iii), an electing corporation may restore value by the fifteenth day of the ninth month following August 11, 2010.

(ii) *Elective acceleration.* If an electing member cannot timely file an election under § 1.108(i)-1T(b)(3) to accelerate its remaining deferred COD income by the due date of the electing member's tax return (including extensions) which occurs prior to August 11, 2010, then an amended return must be filed with the required information statement by the fifteenth day of the ninth month following August 11, 2010.

[T.D. 9497, 75 FR 49401, Aug. 13, 2010; 75 FR 57163, Sept. 20, 2010]

§ 1.108(i)-1T Deferred discharge of indebtedness income and deferred original issue discount deductions of C corporations (temporary).

(a) *Overview.* Section 108(i)(1) provides an election for the deferral of COD income arising in connection with the reacquisition of an applicable debt instrument. An electing corporation generally includes deferred COD income ratably over the inclusion period. Paragraph (b) of this section provides rules for the mandatory acceleration of an electing corporation's remaining deferred COD income, the mandatory acceleration of a C corporation issuer's deferred OID deductions, and for the elective acceleration of an electing member's (other than the common parent's) remaining deferred COD income. Paragraph (c) of this section provides examples illustrating the application of the mandatory and elective acceleration rules. Paragraph (d) of this section provides rules for the computation of an electing corporation's earnings and profits. Paragraph (e) of this section refers to the effective/applicability dates.

(b) *Acceleration events*—(1) *Deferred COD income.* Except as otherwise provided in paragraphs (b)(2) and (3) of this section, and § 1.108(i)-2T(b)(6) (in the case of a corporate partner), an electing corporation's deferred COD income is taken into account ratably over the inclusion period.

(2) *Mandatory acceleration events.* An electing corporation takes into account all of its remaining deferred COD income, including its share of an electing partnership's deferred COD income, immediately before the occurrence of any one of the events described in this

paragraph (b)(2) (mandatory acceleration events).

(i) *Changes in tax status.* The electing corporation changes its tax status. For purposes of the preceding sentence, an electing corporation is treated as changing its tax status if it becomes one of the following entities:

(A) A tax-exempt entity as defined in § 1.337(d)-4(c)(2).

(B) An S corporation as defined in section 1361(a)(1).

(C) A qualified subchapter S subsidiary as defined in section 1361(b)(3)(B).

(D) An entity operating on a cooperative basis within the meaning of section 1381.

(E) A regulated investment company (RIC) as defined in section 851 or a real estate investment trust (REIT) as defined in section 856.

(F) A qualified REIT subsidiary as defined in section 856(i), but only if the qualified REIT subsidiary was not a REIT immediately before it became a qualified REIT subsidiary.

(ii) *Cessation of corporate existence*—(A) *In general.* The electing corporation ceases to exist for Federal income tax purposes.

(B) *Exception for section 381(a) transactions*—(i) *In general.* The electing corporation is not treated as ceasing to exist and is not required to take into account its remaining deferred COD income solely because its assets are acquired in a transaction to which section 381(a) applies. In such a case, the acquiring corporation succeeds to the electing corporation's remaining deferred COD income and becomes subject to section 108(i) and the regulations thereunder, including all reporting requirements, as if the acquiring corporation were the electing corporation. A transaction is not treated as one to which section 381(a) applies for purposes of this paragraph (b)(2)(ii)(B) in any one of the following circumstances:

(i) The acquisition of the assets of an electing corporation by an S corporation, if the acquisition is described in section 1374(d)(8).

(ii) The acquisition of the assets of an electing corporation by a RIC or REIT, if the acquisition is described in § 1.337(d)-7(a)(2)(ii).